



STATE BOARD OF EQUALIZATION

STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

Date Amended:	Enrolled	Bill No:	AB 3092
Tax:	Cigarette and Tobacco Products Licensing Act	Author:	J. Horton
Related Bills:			

BILL SUMMARY

Among its provisions, this bill would do the following:

- Specify that any person that is exempt from regulation under the United States Constitution, the laws of the United States, or the California Constitution would be exempt from the provisions of the Cigarette and Tobacco Products Licensing Act of 2003 (Act); that sales of cigarettes and tobacco products to such people would not be prohibited under the Act; and change the wording required on invoices of tobacco product wholesalers and distributors (*BPC §§ 22971.4, 22978.4 and 22980.1*).
- Clarify that the Board may use regulatory authority with regard to cigarette stamps and meter impressions in a manner that does not affect commerce within this state (*uncodified section*).

ANALYSIS

Licensure Program

Business and Professions Code Sections 22971.4, 22978.4 and 22980.1

Current Law

The Cigarette and Tobacco Products Licensing Act of 2003 requires the Board to administer a statewide cigarette and tobacco products license program to regulate the sale of cigarettes and tobacco products in the state. The Act requires every distributor and every wholesaler to annually obtain and maintain a license to engage in the sale of cigarettes or tobacco products. The Board is required to issue a license to a distributor or wholesaler upon receipt of a completed application and payment of the fees, unless otherwise specified.

Under the provisions of the Act, no distributor, wholesaler, or importer is permitted to sell cigarettes or tobacco products to a retailer, wholesaler, distributor, or any other person who is not licensed pursuant to the Act, or to any person whose license has been suspended or revoked.

Proposed Law

This bill would add Section 22971.4 to the Business and Profession Code to specify that any person that is exempt from regulation under the United States Constitution, the laws of the United States, or the California Constitution is exempt from the provisions of the Cigarette and Tobacco Products Licensing Act of 2003.

This bill would also amend Section 22978.4 of the Business and Professions Code to provide that each distributor or wholesaler shall include on each invoice for the sale of cigarette and tobacco products the following statement: "All California cigarette and tobacco product taxes are included in the total amount of this invoice." This newly required statement would be in place of the requirement to list the exact amount of excise taxes that current law requires.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

Further, this bill would amend Section 22980.1 of the Business and Professions Code to provide that sales of cigarettes or tobacco products are permitted to a distributor, wholesaler, importer, or any other person that the state, pursuant to the United States Constitution, the laws of the United States, or the California Constitution, is prohibited from regulating.

This bill contains an urgency clause and would become effective immediately.

Background

In 2003, Assembly Bill 71 (J. Horton, Ch. 890) enacted the California Cigarette and Tobacco Products Licensing Act of 2003. Among its provisions, the bill established a statewide licensure program to help stem the tide of untaxed distributions and illegal sales of cigarettes and tobacco products that is administered by the Board. Under this licensure program, sales of cigarettes and tobacco products to retailers, distributors, or wholesalers is prohibited unless the buyer is licensed by the Board. However, some retailers are not subject to the provisions of the licensure program since they are exempt pursuant to the Constitution of the United States, laws of the United States, or the California Constitution. Examples of such retailers would include Indians on Indian reservations and stores operated by the United States Government on military bases. Even though these retailers are not required by law to obtain a license with the Board, cigarette and tobacco sellers are prohibited from selling to them.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to make technical amendments to the Cigarette and Tobacco Products Licensing Act of 2003.
2. **Summary of amendments.** The **June 16** amendments pertained to provisions in this bill that would not be administered by the Board. The **August 23** amendments removed the provisions that would have authorized any Board employee granted limited peace officer status to issue citations for violations of Stop Tobacco Access to Kids Enforcement (STAKE) Act or Section 308 of the Penal Code and added provisions making technical amendments to the California Cigarette and Tobacco Products Licensing Act of 2003. The **August 26** amendments made additional technical amendments to the licensure program provisions and removed other provisions from the bill not related to the Board.
3. **Exemption from the licensure program.** The technical amendments this bill would make to the licensure program would allow for the sale of cigarettes and tobacco products to persons who are not required to be licensed, such as Indians on Indian reservations and retail outlets operated by the United States Government on military bases.

Cigarette Tax Stamps

Uncodified Section

Current Law

Current Cigarette and Tobacco Products Tax Law requires the Board, as of January 1, 2005, to replace stamps and meter impressions, currently required to be affixed to a package of cigarettes prior to distribution as evidence of payment of the tax imposed, with stamps and meter impressions that can be read with a scanning or similar device.

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The law requires the stamps and meter impressions to be encrypted with, at a minimum, the following information:

- The name and address of the wholesaler or distributor affixing the stamp or meter impression.
- The date the stamp or meter impression was affixed.
- The denominated value of the stamp or meter impression.

Proposed Law

This bill includes an uncodified section that specifies it is the intent of the Legislature that the Board is authorized to exercise its regulatory authority with regard to cigarette stamps and meter impressions in a manner that does not affect commerce within this state.

This bill contains an urgency clause and would become effective immediately.

Background

In 2002, Senate Bill 1701 (Peace, Ch. 881) required the Board, as of January 1, 2005, to replace stamps and meter impressions, currently required to be affixed to a package of cigarettes prior to distribution as evidence of payment of the tax imposed, with stamps and meter impressions that can be read with a scanning or similar device.

The Board's Investigations Division has identified several evasion schemes involving counterfeit cigarette stamps. Production methods of such stamps include, in part, offset printing, silkscreen, lithography, flexo printing, laser printing and personal computer. Currently, counterfeit stamps are typically of such good quality that they appear identical to an authentic stamp, therefore making it virtually impossible to identify counterfeit stamps by visual inspection. The provisions of SB 1701 addressed the identification of counterfeit stamps by requiring the use of a stamp that is capable of being read by a scanning or similar device. Each stamp would be a unique, encrypted digital signature. An on-site decryption through the use of a scanning or similar device would instantly reveal the unique digital signature, which would verify the authenticity of the stamp. A duplicate or wrong message would indicate a counterfeit stamp.

To implement the provisions of SB 1701, the Board accepted bids from vendors interested in providing the new tax stamp. On August 9, 2004, the Board awarded the contract for the new tax stamps to one of the bidders. The new tax stamps are expected to be in place as of January 1, 2005, as required by law.

COMMENTS

1. **Purpose.** This provision is intended to clarify that the Board may exercise its regulatory authority with regard to cigarette tax stamps and meter impressions in a manner that does not affect commerce in this state. As the Board has awarded a contract to a company to carry out this task, it is anticipated that the new tax stamps will be in place as of January 1, 2005. However, in the unlikely event the new stamps would not be available state-wide, this bill clarifies that the Board may exercise its regulatory authority to work around any potential delays so as to not affect distributors, wholesalers, manufacturers and retailers of cigarettes and tobacco products.
2. **Summary of amendments.** The **August 23** amendments added the Legislative intent language.

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COST ESTIMATE

There are no costs associated with this bill.

REVENUE ESTIMATE

The provisions in this bill will have no impact on state revenues.

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